

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ALVIN CHAMBERS, DECEASED**

Claimant

VS.

# WALLER TRUCKER

Respondent

AND

**WAUSAU INSURANCE COMPANY**

Insurance Carrier

Docket No. 208,447

## ORDER

Certain of the surviving dependents appeal from an Award entered by Administrative Law Judge Bruce E. Moore on June 19, 1996. The Appeals Board heard oral argument December 11, 1996.

## APPEARANCES

James B. Zongker of Wichita, Kansas, appeared on behalf of Alvin L. Chambers, Jr., one of the decedent's surviving children, as well as his mother, Pam Sanders. He also appeared on behalf of Nahanna Chambers and Derick Chambers, also surviving children and their mother, Marietta Shine. Douglas C. Hobbs of Wichita, Kansas, appeared on behalf of the respondent and its insurance carrier. Although appropriate notice was provided to the decedent's surviving spouse, Leola Denise Chambers, she did not appear either in person or by representative.

## ISSUES

The sole issue to be considered on appeal relates to child support payments and the district court order that an arrearage in those payments be collected from the workers compensation benefits. Respondent has agreed that it owes death benefits in accordance with K.S.A. 44-510b to the surviving spouse and children of the deceased Alvin Chambers. The Administrative Law Judge has entered an award apportioning the benefits in accordance with K.S.A. 44-510b with one-half of the benefits to be paid to the decedent's surviving

spouse, Leola Denise Chambers, and the remaining one-half of the benefits to be divided equally among the three surviving children. None of these three children are children of Leola Denise Chambers, the surviving spouse. One of the children, Alvin Chambers, Jr., was from a relationship with a girlfriend, Pam Sanders. The other two children, Nahanna and Derick Chambers, were children from a previous marriage to Marietta L. Shine. From the divorce with Marietta L. Shine, the deceased was ordered to pay child support. At the time of his death he was in arrears in his child support obligation in the amount of \$14,234.64, inclusive of interest. The District Court of Sedgwick County, Kansas has entered an Order dated April 29, 1996, providing that the child support payments should be deducted from the workers compensation benefits ordered in this case. The Administrative Law Judge, however, determined that child support payments cannot be deducted from death benefits and ordered that the benefits be paid to the surviving spouse and children unencumbered by any lien for child support payments. This ruling regarding child support payment is the only issue on appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award by the Administrative Law Judge should be modified solely as it relates to the issue of child support payments.

By amendments which became affective July 1, 1993, the Workers Compensation Act authorizes involuntary assignment of workers compensation benefits to enforce an order for child support. The Act further provides that involuntary assignment is to obtained as follows:

"(1) Any involuntary assignment shall be obtained by motion filed within the case which is the basis of the existing order of support."

K.S.A. 44-514(b)(1)(B) further states that the court may grant the following relief:

"(i) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25% of the workers gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.

"(ii) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump sum, excluding any medical compensation and rehabilitation costs paid directly to providers."

The Administrative Law Judge determined that the above-quoted provisions relating to child support only allow assignment of benefits which would be payable to the injured worker and not an assignment of benefits payable to surviving spouse and children in a death case. Without intending any disagreement with the statutory interpretation by the Administrative Law Judge, the Appeals Board concludes that statute directs that the issues

related to child support enforcement be determined in the district court, not in the workers compensation proceedings. As we understand the statutes, neither the Administrative Law Judge nor the Appeals Board has jurisdiction to determine the propriety of the district court's Order. The Appeals Board therefore concludes that the Award by the Administrative Law Judge should be modified by deleting paragraph 17, the paragraph which states that the benefits are not subject to a lien for child support. The Award is, in all other respects, affirmed.

**AWARD**

**WHEREFORE**, the Appeals Board finds and concludes that the Award by Administrative Law Judge Bruce E. Moore dated June 18, 1996, and amended by Nunc Pro Tunc Award dated June 19, 1996, should be, and is hereby, modified. The Appeals Board finds that neither the Administrative Law Judge nor the Appeals Board has jurisdiction to determine issues relating to the enforcement of the child support benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Douglas C. Hobbs, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director